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OCT 30 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

ORIGINAL
FILE

In the Matter of)
)
Amendment of Section 73.202(b)) MM Docket No.
Table of Allotments) RM-
FM Broadcast Stations)
(Paradise Valley, Arizona))

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

PETITION FOR RULE MAKING

Scottsdale Talking Machine & Wireless Company, Inc.
("Scottsdale"), permittee^{1/} of Channel 290A, Paradise Valley,
Arizona, by its counsel, hereby submits its request to amend
Section 73.202(b) of the Commission's Rules to substitute
Channel 290C3 for Channel 290A at Paradise Valley and modify the
permit accordingly. In support, Scottsdale states as follows:

1. As demonstrated in the attached channel study, Channel
290C3 can be allotted at Scottsdale's authorized transmitter

^{1/} Scottsdale's construction permit application (BPH-870909MF)
was granted in March, 1991 (MM Docket No. 88-410), affirmed
on appeal by the Review Board and, more recently, by the
Commission. See Order, 7 FCC Rcd 4422 (1991). That
decision has been appealed to the D.C. Circuit (Case No.
92-1355). By letter dated August 20, 1992, Scottsdale has
requested the issuance of the construction permit and
expects to receive the permit shortly.

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site 33° 32' 30" and 111° 57' 12" consistent with the minimum distance separation requirements in Section 73.207 of the Commission's Rules and the recently signed U.S./Mexican FM Broadcasting Agreement of 1992. This site is located approximately 1.5 km NNW of Paradise Valley. The attached spacing study reveals two short spacings that deserve additional discussion.

2. First, the vacant allotment of Channel 290C to Nogales, Mexico, is short spaced under the prior Mexican treaty which required that Channel 290 at Paradise Valley be treated as a Class B. However, the new Mexican treaty recognizes Class C3 channels and provides a separation of 259 km²/ (as opposed to the 270 km for Class B channels) to Class C channels. As a result, the new spacing requirement is met by approximately 3 km.

3. Second, the channel study includes a short spacing to the licensed site for Station KONC-FM, Sun City, Arizona. In MM Docket 92-66, 7 FCC Rcd 2271, the Commission proposed to substitute Channel 292C2 for Channel 292A at a restricted site 42.3 kilometers north of Sun City. Scottsdale's proposal meets the spacings to the restricted site for Channel 292C2 at Sun City.

^{2/} This spacing figure was obtained from discussions with FCC staff familiar with the new treaty provisions.

4. Although the Sun City proceeding is still pending, the Commission should accept this petition for processing at this time for two reasons. First, the Sun City proposal is unopposed and other than the delay in receiving Mexican concurrence, there appears to be no obstacle to favorable action on the proposal. Second, Station KONC-FM was evicted from the licensed site pursuant to a bankruptcy court Order of October 4, 1990. See attached "Petition for Rulemaking" of Resource Media, Inc., filed September 4, 1991, and Letter of October 24, 1990. The letter requests special temporary authority to operate from a site which was granted subject to Scottsdale commencing operation. As a result, Station KONC-FM has requested expedited processing of its petition in MM Docket 92-66 to enable it to secure a permanent site without having to relocate to another temporary site. Thus, the licensed site identified for Station KONC-FM in the channel study is no longer viable by the licensee's own admission and therefore not deserving of protection.^{3/}

Accordingly, Scottsdale Talking Machine & Wireless Company, Inc., respectfully requests the Commission to accept this

^{3/} The Commission should consider changing the Sun City coordinates to reflect Station KONC-FM's abandonment of the licensed site in order to process the instant petition or the Commission can condition the Scottsdale petition on the outcome of the uncontested pending Sun City rule making proceeding.

petition to substitute Channel 290C3 for Channel 290A at
Paradise Valley, Arizona, and to modify the permit accordingly.

Respectfully submitted,

SCOTTSDALE TALKING MACHINE & WIRELESS
COMPANY, INC.

By: Mark N. Lipp
Mark N. Lipp

Mullin, Rhyne, Emmons and Topel, P.C.
1000 Connecticut Avenue--Suite 500
Washington, D.C. 20036
(202) 659-4700

Its Counsel

Attachment

October 30, 1992

FM Spacing study

Title: SCOTTDALE TALKING MACHINE / KXLL
 Channel 290C3 (105.9 MHz)
 Database: FCC 06/23/92

Latitude: 33-32-30
 Longitude: 111-57-12
 Safety zone: 45 km

Call	Auth	Licensee name	Chan	ERP-kW	Latitude	Br-to	Dist.	Req.
City of License	St	FCC File no.	Freq	EAH-m	Longitude	-from	(km)	(km)
KEEI	CP	Harold S. Schwartz	236C	100	35-13-16	18.4	196.7	31
Winslow	AZ	BPH-850711M1	95.1	378	111-16-01	198.8	165.7	CLEAR
CP cancelled and callsign deleted 920612								
ALLOD			237C		30-41-50	183.5	316.0	16
Caborca	SO		95.3		112-09-29	3.4	300.0	CLEAR
KRDS-FM APC	Interstate Broadcasting	287C1	25		34-11-32	314.6	103.4	76
Wickenburg	AZ	BPH-920203IC	105.3	412	112-45-13	134.2	27.39	CLEAR
From channel 287C2 per D90-468								
ALLOD			287C1		34-14-02	313.6	112.1	76
Wickenburg	AZ		105.3		112-50-13	133.1	36.14	CLEAR
Proposed to mexico as C on 910425 Site Restricted-Effective 10-15-91-Reserved for KTIMFM per D90-468								
KFAS-FM APC	Casa Grande Communicatio	288C2	50		33-00-21	182.5	59.48	56
Casa Grande	AZ	BPH-900525IA	105.5	150	111-58-52	2.5	3.483	CLOSE
FROM CHANNEL 288A PER D89-75-Amended 900917								
ALLOD			288C2		33-00-00	180.4	60.07	56
Casa Grande	AZ	DOC-89-75	105.5		111-57-30	.4	4.075	CLOSE
Effective 2-26-90-Rsvd for KFASFM, per D89-75								
KFAS-FM LIC	Casa Grande Communicatio	288A	1.90		32-49-27	163.6	82.94	42
Casa Grande	AZ	BLH-831102AB	105.5	110	111-42-09	343.8	40.94	CLEAR
*TO CHANNEL 288C2 PER D89-75								
KVRD-FM LIC	KVRD, Inc.	289A	.04		34-41-15	353.3	128.0	89
Cottonwood	AZ	BLH-910802KD	105.7	779	112-07-02	173.2	38.99	CLEAR
ALLOD			289A		34-44-42	357.3	133.6	89
Cottonwood	AZ	DOC-87-431	105.7		112-01-24	177.2	44.63	CLEAR
Filing window 11/08-12/08/88 **CLOSED**								
NEW	APC	Scottsdale Talk. Mach. &	290A	1	33-32-30	.0		142
Paradise Valley	AZ	BPH-870909MF	105.9	147	111-57-12	.0	-142	SHORT
DOC-88-410; Cut-off 04/28/88								
NEW	APC	Paradise Valley Broadcas	290A	3	33-32-29	91.4	1.317	142
Paradise Valley	AZ	BPH-870910NK	105.9	-9	111-56-21	271.4	-141	SHORT
DOC-88-410; Cut-off 04/28/88; AMENDED 871120								
ALLOD			290A		33-31-55	137.1	1.476	142
Paradise Valley	AZ	DOC-84-231	105.9		111-56-33	317.1	-141	SHORT
Filing window 07/31-09/10/87 **CLOSED** : # 30								

FM Spacing study

Title: SCOTTDALE TALKING MACHINE / KXLL
Channel 290C3 (105.9 MHz)

Latitude: 33-32-30
Longitude: 111-57-12

Call	Auth	Licensee name	Chan	ERP-kW	Latitude	Br-to	Dist.	Req.
City of License	St	FCC File no.	Freq	EAH-m	Longitude	-from	(km)	(km)
NEW	APC	Gil L. Lyons	290A	3	33-30-47	173.5	3.194	142
Paradise Valley	AZ	BPH-870910MC	105.9	82	111-56-58	353.5	-139	SHORT
DOC-88-410; Cut-off 04/28/88; AMENDED 871119								
NEW	APC	American International D	290A	3	33-30-47	173.5	3.194	142
Paradise Valley	AZ	BPH-870910NH	105.9	75	111-56-58	353.5	-139	SHORT
DOC-88-410; Cut-off 04/28/88								
NEW	APC	Hope Valley FM Limited P	290A	3	33-31-28	119.6	3.883	142
Paradise Valley	AZ	BPH-870910ME	105.9	918T	111-55-01	299.6	-138	SHORT
DOC-88-410; Cut-off 04/28/88								
ALLOC			290C		31-19-49	158.7	262.9	270
Nogales	SO		105.9		110-56-42	339.2	-7.08	SHORT
ALLOC			290C		35-01-58	307.5	276.9	237
Kingman	AZ		105.9		114-21-57	126.1	39.95	CLEAR
ALLOC			291A		33-24-23	97.7	107.8	89
Claypool	AZ		106.1		110-48-18	278.4	18.79	CLEAR
Proposed to Mexico as B 10-4-90-Accepted by Mexico 910313 Effective 2-26-90-Re served for KIKOFM per D89-75								
ALLOC			292A		33-36-05	282.0	32.13	42
Sun City	AZ		106.3		112-17-31	101.9	-9.87	SHORT
Coordinates updated from LIC record BLH851218KB								
PRM	DEL	Resource Media, Inc.	292A		33-36-05	282.0	32.13	42
Sun City	AZ	DOC-92-66	106.3		112-17-31	101.9	-9.87	SHORT
Proposed to Mexico as B 920324; PRM								
KONC-FM LIC	KLFF-FM, Inc.		292A	2.50	33-36-05	282.0	32.13	42
Sun City	AZ	BLH-851218KB	106.3	99	112-17-31	101.9	-9.87	SHORT
PRM	ADD	Resource Media, Inc.	292C2		33-58-30	323.9	59.70	56
Sun City	AZ	DOC-92-66	106.3		112-20-08	143.6	3.700	CLOSE
Proposed to Mexico as B 920324; PRM-Site restricted 42.3 km North								
ALLOC			292A		32-50-04	159.4	83.78	42
Arizona City	AZ		106.3		111-38-15	339.6	41.78	CLEAR
Coordinates updated from LIC record BLH850502LA Proposed to Mexico as B 911 001-Accepted by Mexico 920227								
KONZ	LIC	Arizona City Broadcastin	292A	3	32-50-04	159.4	83.78	42
Arizona City	AZ	BLH-850502LA	106.3	91	111-38-15	339.6	41.78	CLEAR
Proposed to Mexico as B 911001								

Paradise Valley, Arizona

August 18, 1992

FM Spacing study

Title: SCOTTDALE TALKING MACHINE / KXLL
Channel 290C3 (105.9 MHz)

Latitude: 33-32-30
Longitude: 111-57-12

Call	Auth	Licensee name	Chan	ERP-kW	Latitude	Br-to	Dist.	Req.
City of License	St	FCC File no.	Freq	EAH-m	Longitude	-from	(km)	(km)
KRLV	LIC	Wescom of Nevada, Inc.	293C	100	36-00-30	315.4	391.1	96
Las Vegas		NV BLH-870827KC	106.5	352	115-00-20	133.7	295.1	CLEAR

>> End of channel 290C3 study <<

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In re Matter of

Section 73.202(b),
Table of Allotments
FM Broadcast Stations
(Sun City, Arizona)

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RM-7440

11/11/91

Federal Communications Commission
Office of the Secretary

To: The Commission

PETITION FOR RULEMAKING

Resource Media, Inc. ("RMI"), licensee of FM Station KONC-FM, Channel 292A, Sun City, Arizona, hereby petitions for rulemaking to amend Section 73.202(b) of the Commission's rules in order to substitute Channel 292C-2 for Channel 292A at Sun City and to modify the authorization for KONC-FM accordingly. In support of this petition, the following is shown:

KONC-FM presently operates pursuant to a special temporary authority ("STA") issued to it by the FCC to permit the station to relocate its transmitter site due to a court order forcing the licensee to vacate its prior authorized site. This STA was initially granted on December 20, 1990 and has an expiration date of September 6, 1991; an extension request was filed on September 4, 1991.

The STA contains the condition that operation at KONC-FM's current site must cease upon grant of program test authority to the permittee of Channel 290A at Paradise Valley (Docket No. 88-410). RMI is thus well aware that it cannot operate from its current site indefinitely; hence, it has diligently endeavored to secure a new permanent transmitter site.

This petition proposes a co-channel upgrade at a new permanent site for which RMI has both reasonable assurance of its availability and FAA approval.

These are required since, as is demonstrated in the attached Engineering Statement of du Treil, Lundin and Rackley, Inc. (Exhibit 1), predicted city grade (70 dBu) coverage to all of Sun City from the proposed permanent site cannot be provided pursuant to the assumption of uniform terrain method. However, the attached study, based on actual terrain, demonstrates that the proposed upgraded facility will provide 70 dBu coverage to all of Sun City.

According to FCC policy established in Memorandum Opinion and Order (Woodstock and Broadway, Virginia), 3 FCC Rcd. 6398 (1988), the FCC will accept the use of an actual terrain analysis in cases of proposed higher, co-channel upgrade provided the petitioner demonstrates it has (1) reasonable assurance of the availability of a specific site, and (2) FAA approval for that site. Both conditions are met in this case.

Attached hereto as Exhibit 2 is a letter from Mr. Ron Ruziska of the Arizona State Land Department to Mr. Mike Wallis, the real estate agent representing RMI, regarding the availability of the site for lease by RMI. This letter establishes reasonable assurance of the availability of the proposed site according to the FCC's requirements. Under similar circumstances specifically involving the ASLD, the FCC has held that "where an applicant is dealing with a government agency that is unwilling or unable to make less than a legally binding commitment and where the record contains no explicit rejection of the applicant's proposal, a mere willingness by the government agency to entertain a request for use of the land in question is sufficient to provide reasonable assurance of the site's availability." Alden Communications Corporation, 3 FCC Rcd. 3937 (1988).

The requirements of the Alden case are met by the ASLD letter sent by Mr. Ruziska since it states that the land is available for a commercial lease and that the ASLD would consider an application to lease the land for use as a communications site. Accordingly, reasonable assurance of site availability has been established.

FAA clearance (FAA Study No. 90-AWP-1280-OE, dated August 27, 1991) has also been obtained for a tower at the proposed permanent site at 185.0 meters (607 feet) above ground level and 938.5 meters (3079 feet) above mean sea level, which will support the proposed antenna. This FAA clearance satisfies the requirement of FAA approval for the proposed site.

The Engineering Statement also demonstrates that KONC-FM can operate from the proposed site consistent with all separation requirements to existing and proposed stations and allotments provided two contingencies are satisfied. The first contingency is the licensing of Radio Station KONZ(FM), Channel 292A, Arizona City, at the location proposed in its pending application (File No. BMPH-910531IE). This application has been accepted for filing and is expected to be granted later this month. Since KONZ and KONC-FM are under common control, it is expected that this contingency will be satisfied shortly after grant of that application. The second contingency is the licensing of Station KIHX-FM, Prescott Valley, Arizona, which was ordered to move from Channel 292A to Channel 294C-2 pursuant to MM Docket No. 88-597. On August 6, 1991 the FCC granted the application of KIHX(FM) to implement its channel upgrade (File No. BPH-910219IB), Public Notice, August 16, 1991; accordingly, the

modified license for this station specifying its new channel should be issued shortly.

The upgrade of KONC-FM from Channel 292A to 292C-2 is in the public interest since it will prevent KONC-FM, the only radio station in the entire metropolitan Phoenix area to offer a format of classical music, from going off the air and disrupting service to its listeners in Sun City and its environs. Relocation to a permanent site must be completed in the near future in order to satisfy the terms of the station's STA. The permanent site chosen is in the public interest since it will significantly enhance the station's signal coverage area. Therefore, for all of the reasons given above, RMI respectfully requests the FCC to institute a rulemaking proposing the substitution of Channel 292C-2 for Channel 292A at Sun City, Arizona, and the modification of the license of KONC-FM accordingly.

Respectfully submitted,

RESOURCE MEDIA, INC.

By: Thomas J. Hutton
Thomas J. Hutton
Nancy L. Wolf

Its Counsel

DOW, LOHNES & ALBERTSON
1255 Twenty-third Street, N.W.
Suite 500
Washington, D.C. 20037
(202) 857-2500

September 4, 1991

DOW, LOHNES & ALBERTSON

ATTORNEYS AT LAW

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NANCY L. WOLF

October 24, 1990

CABLE "DOWLA"
TELEX 425546

DIRECT DIAL NO.

857-2702

VIA HAND DELIVERY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Radio Station KONC(FM),
Sun City, Arizona

REQUEST FOR SPECIAL TEMPORARY AUTHORITY

Dear Ms. Searcy:

Resource Media, Inc., licensee of Radio Station KONC(FM), Sun City, Arizona (the "Station"), hereby requests special temporary authority ("STA") to relocate its transmitter site, as proposed in the accompanying application, due to a court order forcing the licensee to vacate its present transmitter site within ninety days. In support of this request, the following is shown:

The Station is the only radio station in the entire metropolitan Phoenix area offering a format of classical music. In July 1989, when control of the licensee was transferred to its present owners pursuant to FCC consent (File No. BALH-880331ED), the Station was in danger of going dark because its owners had been in Chapter 11 bankruptcy. With the purchase of the Station out of the bankruptcy proceeding, the present owners were able to keep the Station on the air to serve its loyal listeners. Not only was the format continued without interruption, but the present owners have spent approximately \$250,000 since their acquisition of the Station to modernize and upgrade the Station's facilities. All of these improvements are described on Exhibit A attached hereto.

As part of the transfer of control, the present owners entered into a 50-year lease, dated July 17, 1989, with the former owners for the Station's current FM tower site. On October 4, 1990, the licensee was served with a notice by the United States Bankruptcy Court for the District of Arizona (a copy of this notice is attached as Exhibit B) ordering the

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FM EXAMINERS

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FCC MAIL SECTION

Ms. Donna R. Searcy
October 24, 1990
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licensee to vacate its FM tower site within 90 days. Specifically, the Chief U.S. Bankruptcy Judge found that the lease was entered into without proper notice to a secured creditor and that the real property in question rightfully belonged to that party due to its secured interest in the FM transmitter site. Having voided the lease, the Judge provided a 90-day stay to allow for "the orderly removal of the subject antenna from (the secured creditor's) property."

The licensee now comes before the FCC in order to ensure that KONC(FM) does not go dark. The licensee has diligently reviewed all available transmitter sites in the Phoenix area. The licensee's conclusion, presented informally to Dennis Williams, Chief, FM Branch, in a meeting held on October 11, 1990, is that there are no non-short-spaced sites currently available to which the licensee could relocate its operations within the next ninety days. One potential site, described as the Shaw Butte site (coordinates 33°35'47", 112°05'29"), is immediately available, is not short-spaced to any existing radio stations, but is short-spaced to the reference points and proposed transmitter site locations of the applicants in a pending comparative hearing for a new FM station on Channel 290A at Paradise Valley, Arizona.^{1/} This hearing (Docket 88-410) has six competing applicants who are awaiting an initial decision from the Administrative Law Judge. Having reviewed the alternatives available, including the Shaw Butte site, Mr. Williams suggested that the licensee seek an STA to relocate its transmitter site to the Shaw Butte site with the condition that the licensee vacate that site upon grant of program test authority to the permittee of Channel 290A at Paradise Valley. Simultaneously, the licensee will endeavor to find an alternative transmitter site which will likely involve a change in channel and file to move to that site on a permanent basis.

^{1/} The proposed Shaw Butte site would also be short-spaced to the present transmitter site of Radio Station KXMK(FM), Arizona City, Arizona. KXMK(FM) is licensed to Arizona City Broadcasting Corporation, a company under common control with the licensee of KONC(FM). Arizona City Broadcasting Corporation has filed a minor change application to relocate the transmitter site of KXMK(FM); that application was accepted for filing by the FCC on September 17, 1990 (File No. BPH-900831IA). Upon grant of the modification application, the short-spacing will be cured. Accordingly, it is respectfully requested that the minor change application of KXMK(FM) be given expedited processing.

Ms. Donna R. Searcy
October 24, 1990
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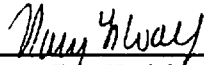
The licensee respectfully submits that a grant of this STA would serve the public interest because it will prevent KONC(FM) from going off the air and disrupting service to its listeners. It is well-recognized that grant of an STA is appropriate when it is necessary to prevent cessation of broadcast service or to maintain a service to which the public has become accustomed.^{2/} As the attached order of the court shows, the licensee has no choice but to vacate its present site within a very short time period; without an STA, the licensee would have to cease operations. Accordingly, this request for STA is respectfully submitted to permit immediate relocation of KONC(FM) to a new transmitter site.

Should any questions arise regarding this request, kindly communicate with this office.

Very truly yours,

RESOURCE MEDIA, INC.

By:


Thomas J. Hutton
Nancy L. Wolf

Its Attorneys

NLW:taf

Enclosure

cc(w/encl.): Mr. Dennis Williams (via hand delivery)
Mr. Andrew Rhodes (via hand delivery)

^{2/} See Phoenix Media Corporation, 60 R.R.2d 1409 (1986); West Coast Media, Inc., 56 R.R.2d 483 (1984); Mr. Richard Varnes, 51 R.R.2d 483 (1984).

CERTIFICATE OF SERVICE

I, Veronica Abarre, a secretary in the law firm of Mullin, Rhyne, Emmons and Topel, P.C., do hereby certify that I have this 30th day of October, 1992, caused to be hand delivered a copy of the foregoing "Petition For Rule Making" to the following:

Nancy V. Joyner
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W.--Room 8314
Washington, D.C. 20554



Veronica Abarre